

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 15, 2007

**STATE OF TENNESSEE v. TAMELIA POPE ORTEL**

**Appeal from the Circuit Court for Bedford County**  
**No. 16016     Lee Russell, Judge**

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**No. M2006-01890-CCA-R3-CD - Filed June 27, 2007**

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In May 2006, the defendant, Tamelia Pope Ortel,<sup>1</sup> was indicted by a Bedford County grand jury on seventy-four counts of forgery,<sup>2</sup> with the amounts of the forged instruments (all less than \$500) rendering the offenses Class E felonies. In July 2006, the defendant pled guilty to all counts of the indictment. The trial court sentenced the defendant to the maximum term of two years in prison as a Range I, standard offender, on each count, running most of the terms concurrently but some consecutively, resulting in an effective sentence of eight years. The defendant's sole issue on appeal is that the trial court erred in refusing to impose an alternate sentence. We conclude that the trial court properly sentenced the defendant and thus affirm the ruling of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER JJ., joined.

Donna Orr Hargrove, District Public Defender; Andrew Jackson Dearing III, Assistant District Public Defender, for the appellant, Tamelia Pope Ortel.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Chuck Crawford (on appeal) and W. Michael McCown (at trial), District Attorneys General; Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

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<sup>1</sup> At the sentencing hearing, the defendant stated that she has recently changed her name to Tamelia Ann Pope; however, absent a name change order in the record, we will refer to the defendant as she was named in the indictment.

<sup>2</sup> The indictments arise from thirty-seven separate instances of forgery occurring between December 2005 and February 2006; the state indicted on separate theories for each offense.

## OPINION

At the defendant's plea hearing, the state informed the trial court that the state's proof would show that the defendant's sister, Elisa Phelps, had notified police that several checks had been written on their father's account without his consent, and Phelps suspected that the defendant had forged the checks. Most of these checks had been forged while their father, Bobby Allison, had been in the hospital; a police investigation revealed that Allison had given the defendant permission to write the checks, but only to buy food. In the course of the investigation, the defendant admitted that she had used the money not to buy food, but to buy crack cocaine. After hearing this statement, the defendant admitted to forging checks on her father's account.

At the sentencing hearing, the state introduced the defendant's presentence report into evidence. The report indicated that the defendant had one prior felony conviction for obtaining drugs by fraud, and that she had numerous misdemeanor convictions, including convictions for theft, worthless checks, child abuse, and simple possession of narcotics.

The defendant testified that she had been addicted to the prescription painkillers Lortab and OxyContin for approximately three years. The defendant's physician had originally prescribed the drugs after the defendant suffered a pinched nerve and bulging disc in her back; once the prescriptions ran out, she stated that she would do "anything [she] could to get them." About one year after the defendant began taking the painkillers, she began using both powder and crack cocaine. The defendant noted that in February 2005, she sought inpatient treatment at Cumberland Heights, but she was only able to stay a week because her insurance would not permit her a longer stay. The defendant, who testified that she was presently taking Zoloft for depression, admitted that she had a serious addiction problem and needed treatment. She admitted that she had lost her home, her vehicles, her children, and her job because of her addictions. On cross-examination, the defendant admitted that she had a criminal record before her addiction problems began, and that she was on probation for two offenses, theft and prescription fraud, at the time she committed the forgeries.

Allison, the defendant's father, testified that although the defendant had stolen from him, he still loved her and that she needed help. Allison testified that if he caught his daughter using drugs again, he would turn her in to the police himself.

## ANALYSIS

An appellate court's review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. Tenn. Code Ann. § 40-35-401(d) (2006). As the Sentencing Commission Comments to this section note, on appeal the burden is on the defendant to show that the sentence is improper. This means that if the trial court followed the statutory sentencing procedure, made findings of fact that are adequately supported in the record, and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, the court may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In conducting its de novo review, the appellate court must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his own behalf, and (7) the potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103, -210 (2006); see State v. Ashby, 823 S.W.2d 166, 168 (Tenn. 1991); State v. Moss, 727 S.W.2d 229, 236-37 (Tenn. 1986).

In this case, the trial judge sentenced the defendant as a Range I, standard offender, to the maximum sentence on each offense, two years in prison, running some of the sentences concurrently and some consecutively, resulting in an effective sentence of eight years in prison. The defendant argues that the trial court erred in sentencing the defendant to a prison sentence and refusing an alternative sentence. We disagree.

In determining whether incarceration or an alternative sentence is most appropriate, a trial court should consider whether (1) confinement is needed to protect society by restraining a defendant who has a long history of criminal conduct, (2) confinement is needed to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to people likely to commit similar offenses, or (3) less restrictive measures than confinement have frequently or recently been applied unsuccessfully to the defendant. Ashby, 823 S.W.2d at 169 (citing Tenn. Code Ann. § 40-35-103(1)(A)-(C)). The trial court shall also consider the mitigating and enhancing factors set forth in Tennessee Code Annotated sections 40-35-113 and -114. Tenn. Code Ann. § 40-35-210(b)(5) (2006); State v. Boston, 938 S.W.2d 435, 438 (Tenn. Crim. App. 1996). In addition, a trial court should consider a defendant's potential or lack of potential for rehabilitation when determining if an alternative sentence would be appropriate. Tenn. Code Ann. § 40-35-103(5); Boston, 938 S.W.2d at 438. A defendant convicted of a Class C, D, or E felony and sentenced as an especially mitigated or standard offender “should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary.” Tenn. Code Ann. § 40-35-102(6) (2006). However, under the revised Sentencing Act, “[a] court shall consider, but is not bound by, this advisory sentencing guideline.” Id. Furthermore, although probation must be considered, “the defendant is not automatically entitled to probation as a matter of law.” Tenn. Code Ann. § 40-35-303(b) (2006), Sentencing Comm’n Comments; State v. Hartley, 818 S.W.2d 370, 373 (Tenn. Crim. App. 1991).

In denying the defendant alternative sentencing, the trial court stated:

There’s a presumption in favor of alternative sentencing; however, in this case, I think that presumption is overcome by the fact that when she’s gotten alternative sentencing in the past, including on this particular occasion, she has not successfully completed it. She was still under supervision for obtaining drugs by fraud at the time she was writing these checks, right and left. And previously . . . she’d violated the terms of her probation. I don’t think she’s a good candidate for alternative

sentencing.

We agree with the trial court's reasoning and conclude that the defendant's issue is without merit.

#### CONCLUSION

In light of the evidence produced at the sentencing hearing, the trial court properly sentenced the defendant to a prison term and denied alternative sentencing. Therefore, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE